

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**SANDERSON CORPORATION and DOMINIK M.  
GAMBLE, on behalf of the shareholders of CAPITAL  
BANK & TRUST COMPANY,**

**ORDER**

1:04-CV-713 (DNH/RFT)

-against-

**CAPITAL BANK & TRUST COMPANY, THE BOARD  
OF DIRECTORS OF CAPITAL BANK & TRUST  
COMPANY, FRANCIS H. TROMBLY, Individually and  
as Chairman of the Board of Directors of CAPITAL  
BANK & TRUST COMPANY, PETER D. CUREAU,  
Individually and as Chief Executive Officer and as Director  
of CAPITAL BANK & TRUST COMPANY, EUGENE M.  
SNEERINGER, JR., Individually and as Director of  
CAPITAL BANK & TRUST COMPANY, and EDWARD  
P. SWYER, Individually and as Director of CAPITAL  
BANK & TRUST COMPANY,**

*Defendants.*

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED

MAY 16 2006

LAWRENCE K. BAERMAN, Clerk  
UTICA

Upon the reading and filing of Defendants' Motion to Dismiss, including Notice of Motion, dated April 25, 2006 (Docket No. 19); Declaration of Thomas J. O'Connor, Esq., in support of motion, dated April 25, 2006, and exhibits attached thereto (Docket No. 19, Attachment #1); Affidavit of Francis H. Trombly, Jr., in support of motion, dated April 24, 2006 (Docket No. 19, Attachment #2); and Affidavit of Peter D. Cureau, in support of motion, dated April 24, 2006 (Docket No. 19, Attachment #3);

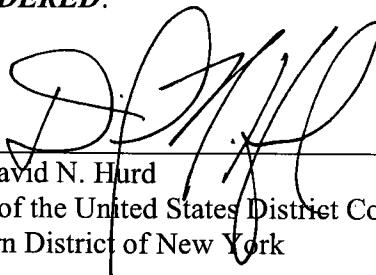
And upon the reading and filing of correspondence from John J. Henry, Esq., dated May 4, 2006, advising the Court that Plaintiffs do not oppose Defendants' Motion to Dismiss, and do consent to the dismissal of this action (Docket No. 21);

**NOW**, upon the motion of Defendants, it is,

**ORDERED**, that Plaintiffs' Complaint is dismissed in its entirety, with prejudice, and without costs, pursuant to Federal Rule of Civil Procedure 12, as Plaintiffs are not shareholders of Capital Bank and Trust Company and lack standing to maintain this action under New York's Business Corporations Law § 626..

Dated: May 16, 2006  
Utica, NY

**SO ORDERED:**

  
Hon. David N. Hurd  
Justice of the United States District Court  
Northern District of New York

E N T E R:

CERTIFICATE OF SERVICE

I certify that on May 15, 2006, I filed the foregoing Proposed Order with the Clerk of the District Court for the Northern District of New York through the CM/ECF system, which provided electronic notification of such filing to the following:

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/s/ Thomas J. O'Connor

THOMAS J. O'CONNOR  
Bar Roll No. 103475